

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CONNIE M. SU and U.S. POSTAL SERVICE,
POST OFFICE, Compton, Calif.

*Docket No. 97-811; Submitted on the Record;
Issued October 9, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issues are: (1) whether appellant has established that she sustained an injury in the performance of duty on October 24, 1995; and if so, (2) whether she suffered any disability as a result of the injury; and (3) whether appellant is entitled to continuation of pay for the period October 24, 1995 through February 8, 1996.

The record discloses that appellant filed a notice of traumatic injury on October 26, 1995 contending that she sustained an injury on October 24, 1995 at 2:30 p.m. Appellant stated:

“It happened the three heavy lockers falling (sic) down to hit on my whole body when I tried to open my locker that located at the rest room area.”

On the reverse of the notice, appellant's supervisor reported that his knowledge of the facts about the injury did not agree with the employee or witness.

On October 27, 1995 the supervisor reported the following: “[Appellant] was putting away her tea cup into her locker. She stood up inside the locker to put her tea cup above her head and pull[ed] the locker down upon her.”

Appellant noted in the witness statement portion of the CA-1 the following:

“After a while happening, Postmaster Bill Hector, Supervisor Lawrence Franklin, Supervisor Booker Creighton and some employees came in to look at what happen[ed]. Later, I was sent to Del Amo Industrial Hospital emergency room.”

The first medical report from Am Health Medical Group located at 2107 East Del Amo Boulevard revealed that on October 24, 1995 appellant reported “a heavy metallic locker fell on her hitting her [right] hand, both knees, [right] ankle and she fell on her buttock.” Subjective complaints including “multiple pain.” Diagnosis included “contusion, multiple.” Treatment rendered included examination, x-ray knee, ice pack given, elastic knee brace given, area

cleansed, applied sterile dressing, Naproxen 375 milligram and Tetanus injection. Under work status, Dr. Jesus Mendoza noted that appellant was not able to return to her usual work but could return to modified work beginning October 25, 1995 with restrictions of no climbing of stairs or ladders. Regarding objective finding, Dr. Mendoza reported that appellant's knee was negative with soft tissue swelling and slight medial tenderness; had full range of motion, no varus/valous instability; that her left knee anterior patella revealed slight soft tissue swelling, ecchymosis, tenderness and that the sacrum cocyx revealed minimal tenderness and negative soft tissue swelling. The physician restricted appellant from pushing, pulling or lifting over 15 pounds. No repetitive bending/stooping and no prolonged walking or standing.

The Office of Workers' Compensation Programs accepted appellant's claim for contusions on the right hand, both knees and right ankle.

The record contains three form medical reports from Kaiser Permanente revealing that appellant was seen on November 5 and 8, 1995 for musculoligamentous sprains. Appellant was initially advised to return to work on November 8, 1995 but on November 8, 1995, she was noted to be unable to return to work between November 8 and 15, 1995 with restrictions to perform light duty involving sitting, standing, reaching and grasping.

The record contains a report of termination of disability (Form CA-3) revealing that appellant returned to work on November 16, 1995 and worked 6.52 hours and worked 2.37 hours on November 17, 1995. The type of work appellant attempted to perform was not noted. Appellant returned to full duty on January 16, 1996. She receive continuation of pay from October 26 through December 9, 1995.

Appellant filed a Form CA-7 claiming lost wages on December 15, 1995 for the period December 8 to 31, 1995. Appellant subsequently filed a CA-8 form claiming continuing compensation from January 1 to 7, 1996.

The record also contains medical reports by Dr. Tai-Hun Lin, an internist associated with a health maintenance organization. In medical reports dated October 26 and November 5 and 23, 1995, the health organization's physicians noted that appellant had had musculoskeletal sprain and extended the date by which appellant would be released to return to work, the last date being November 23, 1995. In a medical report dated November 17, 1995, Dr. Lin stated that, due to neck pain and weakness in her upper arm, appellant was totally disabled until December 8, 1995. In a December 8, 1995 medical report, the physician stated that "because of dizziness, pain," appellant would not be able to work for the remainder of the year. In an attending physician's report dated December 15, 1995, Dr. Lin stated that appellant had been initially examined on November 17, 1995, that he had diagnosed her as having a right thoracic outlet, and bruises and induration of the leg as a result of an employment injury, and determined that appellant was totally disabled from November 17, 1995 to January 6, 1996, and would be partially disabled to February 8, 1996.

By letter dated January 8, 1996, the Office advised appellant that she had been returned to modified duty by a physician at the Del Amo Industrial Medical Clinic, and that her subsequent medical providers had not been approved by the Office. Appellant was advised to submit a request for a change in medical provider in writing with a medical justification for the

recommended change. The Office noted, however, that an internist was not an appropriate medical specialist to treat her claimed medical condition, and therefore Dr. Lin would not be approved. The Office did not note whether the physician at the clinic was an appropriate specialist for appellant's injuries.

By decision dated February 14, 1996, the Office denied appellant's claims for compensation for the period December 8, 1995 to January 7, 1996 on the grounds that the record did not establish disability for the periods being claimed.

On January 19, 1996 the Office received appellant's claim for continuing compensation on account of disability (Form CA-8) requesting compensation from January 1 to 7, 1996 due to her October 24, 1995 employment injury. On February 19, 1996 appellant again requested reconsideration and permission to change physicians.

In a decision dated March 19, 1996, the Office denied appellant's request for reconsideration on the grounds that Dr. Lin had not been approved by the Office as her treating physician, and that appellant had not timely requested a change of physicians because appellant's medical condition was orthopedic in nature and that Dr. Lin's medical specialty was not orthopedic medicine.

Section 8118(a) of the Federal Employees' Compensation Act¹ provides: "The United States shall authorize the continuation of pay of an employee ... who has filed a claim for a period of wage loss due to a traumatic injury." The Office's regulations state that an employee is not entitled to continuation of pay unless "the employee sustains a traumatic job-related injury."² The Office's regulations state that a traumatic injury "must be caused by a specific event or incident or series of events or incidents within a single workday or work shift."³

In the instant claim, appellant was taken directly from her job to a medical clinic after a locker fell over on her. Appellant was diagnosed with multiple contusions and sprains, released to modified duty and instructed to report back to the clinic the following day. Appellant attempted to return to work and subsequently sought additional medical care. The Office rejected the subsequent medical reports submitted by appellant and relied exclusively on the single medical report by the medical clinic releasing appellant back to modified duty on the date of injury. The Office denied further claims for lost wages despite not having a follow-up report from the medical clinic or a report from the employing establishment that appellant was provided modified work that met the restrictions imposed on her by the clinic.

The Board finds that the Office accepted the claim based on the traumatic injury appellant sustained on October 25, 1995 and the medical report from the medical clinic specializing in emergency medicine. The Board further finds that the single report from Dr. Mendoza was not sufficient for the Office to reject appellant's claim for continuation of pay

¹ 5 U.S.C. § 8118(a).

² See *Daniel R. Hickman*, 34 ECAB 1220 (1983); 20 C.F.R. § 10.110.

³ *James A. Lynch*, 32 ECAB 216 (1980); see also 5 U.S.C. § 8101(1).

commencing October 26 through December 9, 1995 and reject her claim for compensation beginning December 10, 1995 without establishing that appellant's employment-related injury had ceased without residuals or that she had refused to perform the modified-duty work that satisfied the restrictions set forth by Dr. Mendoza.

The decisions of the Office of Workers' Compensation Programs dated March 19 and February 14, 1996 are hereby reversed.

Dated, Washington, D.C.
October 9, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member